

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7129 of 1999

with

SPECIAL CIVIL APPLICATION No 7366 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SUNNY DHARAMPALSINGH CHAUDHARYTHROUGH FATHER AND GUARDIAN

Versus

GUJARAT SECONDARY EDUCATION BOARD

Appearance:

1. Special Civil Application No. 7129 of 1999

MR RS SANJANWALA for Petitioner

MR AD OZA for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2, 3

2. Special Civil ApplicationNo 7366 of 1999

TANNA ASSOCIATES for Petitioner

MR AD OZA for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 30/12/1999

CAV JUDGEMENT

These two petitions under Article 226 of the Constitution challenge the decision of respondent no.1-Gujarat Secondary Education Board (hereinafter referred to as the Board or the respondent - Board) cancelling the petitioners' results for the SSC Examination held in March 1999 and for directing the respondent-Board to declare the petitioners' result in the said examination and also to direct the respondents including respondent no.3 - school to admit the petitioner in the said school and permit the petitioners to pursue further studies in Standard XI. Since both the petitions raise more or less common questions of law and facts, they were heard together and are being disposed of by this common judgement.

2.0 The facts leading to filing of Special Civil Application No.7129 of 1999, broadly stated, are as under:-

2.1 Petitioner - Sunny D Chaudhary appeared at the Secondary School Certificate Examinations (SSC Examination) held by respondent-board in March 1999. The petitioner had to appear in the examination in 7 papers out of which the examination for 6 papers was held at two different High Schools from 15.3.1999. However, the examination in Music was held at Government Higher Secondary School at Gandhinagar which was different from the school (respondent no.3 - Xavier's School, Gandhinagar) where the petitioner had prosecuted his studies in the 10th Standard. Music was an optional subject selected by the petitioner and marks in such an optional subject are not taken into account for the purpose of admission to Standard XI in any school. The marks obtained in the Music Examination are allotted out of 100 marks of which 50 marks are reserved for practical and 50 marks are reserved for theory. The practical examinations were held well before the examination commenced on 15.3.1999 and for the balance 50 marks in theory, the petitioner appeared at the examination at Government Higher Secondary School at Gandhinagar on 27.3.1999.

2.2 It is the petitioner's case that on 27.3.1999 the examination in music theory commenced at 10.30 AM and

very soon thereafter at around 11 AM all the students in the particular class room were informed by the Supervisor that the Vigilance Squad had arrived and the students would be checked for any material from which they can copy. During the resultant chaos, several students tried to dispose of the books in their possession and one of such books which was attempted to be thrown out of the window landed near the petitioner. The squad of four persons visited the examination hall and the petitioner was asked to hand over one of the books which were landed near the petitioner. The petitioner handed over the book to Director of the Board who was one of the members of the squad and who enquired from the rest of the class as to who had thrown the book and as none of them had confessed, the Director left the class room. All the students including the petitioner continued to write the answer papers. About 10 minutes thereafter while the petitioner was writing the answer paper, the clerk of the school and one another person came there and asked the petitioner to write his name and examination number on the book. The petitioner was also asked to fill in one form but as the petitioner refused to do so, his answer book was taken away. The teacher who was supervising in the examination hall had advised the petitioner to fill in the form saying that if the petitioner did not sign the form, the petitioner would be declared as having failed in the examination. The petitioner, therefore, signed the form and thereafter the petitioner was permitted to write the examination paper.

2.3 The petitioner was thereafter served with the notice dated 9.4.1999 (Annexure-B) alleging that the petitioner was caught committing the irregularities at the examination held on 27.3.1999 and was required to attend the personal hearing on 24.4.1999. The petitioner was called upon to fill in the prescribed form asking the petitioner to remain present at the personal hearing and also to state whether the petitioner accepts the said allegations. A copy of the said form filled in by the petitioner on 15.4.1999 is at Annexure-C to the petition. The petitioner remained present at the personal hearing before the Disciplinary Committee on 23.4.1999. The petitioner pleaded not guilty and explained to the Committee the manner in which he was wrongly implicated and appealed to the Committee to exonerate the petitioner of the allegations levelled against him. Thereafter the petitioner also submitted a representation (Annexure-E to the petition) to respondent no.2 Chairman of the respondent-Board. When the results of the examinations were declared on 8.6.1999, the petitioner's result was cancelled with an intimation that the petitioner will be

entitled to appear at the examinations to be held in the year 2000 as per the letter dated 8.6.1999 (Annexure-F).

2.4 The petitioner challenged the said decision by filing Special Civil Application No.4045 of 1999 before this Court. After hearing the parties, this Court allowed the said petition after holding that the petitioner was denied the reasonable opportunity of being heard and further also on the ground that there was no evidence to hold the petitioner guilty of the charge levelled against him. The respondent-authorities were directed to declare the result of the petition. Against the said judgement and order dated 21/23-7.1999, the respondent-Board preferred Letters Patent Appeal No.1103 of 1999 which came to be disposed of by the Letters Patent Bench upon recording the following statement:-

"Counsel for the Board submitted that the Examination Committee is prepared to give just notice to these two students and the Committee will examine the whole matter again and pass appropriate order. In view of this submission, we direct that the matter again be considered by the Examination Committee by giving sufficient opportunity to the students for meeting with the allegations and they may be heard and revised order be passed on or before 6.9.1999. Office to post these appeals on 7.9.1999. The Committee is free to take any appropriate decision untrammelled by the decision and observation made in the impugned judgment.

The directions of the learned single Judge to declare results will remain stayed."

2.5 Pursuant to the aforesaid liberty, the respondent-Board issued another show-cause notice dated 21.8.1999 setting out the allegations against the petitioner in detail and giving the petitioner an opportunity of hearing before the Examination Committee on 31.8.1999. The petitioner appeared before the Examination Committee and in the meantime also submitted reply dated 25.8.1999 (Annexure-K) inter alia pointing out that the petitioner had passed the examination in the last five years with distinction/first class marks and that the petitioner was also outstanding in extra-curricular activities.

2.6 On the next date of hearing of the Letters Patent Appeal the Examination Committee produced its decision (Annexure-L) after rehearing, taking the view that the

petitioner was guilty of the charge levelled against him and that the previous decision did not require any change.

Thereafter the Letters Patent Bench permitted the petitioner to file a substantive petition to challenge the aforesaid decision which is produced at Annexure-L to this petition. It is the aforesaid decision of the respondent-Board which is challenged in this petition.

In response to the notice issued by this Court, affidavit-in-reply has been filed by the Secretary of the respondent-Board.

3. FACTS IN SPECIAL CIVIL APPLICATION NO.7666 OF 1999:-

The facts in Special Civil Application No.7666 of 1999 are more or less similar. In this petition also affidavit-in-reply has been filed by the Secretary of the respondent-board.

4. At the hearing of these petitions, the learned counsel for the respondent-Board has also produced the relevant record pertaining to the examination in question i.e. Examination in Music Theory (50 marks) including the question paper, the answer books of the two petitioners and the entire material which was before the examination committee. The learned counsel for the respective parties have also tendered written submissions.

5. The submissions made on behalf of the petitioners may be briefly summarised as under:-

5.1 The petitioners have explained the circumstances in which the so called admission was made by the petitioners who were boys studying in the 10th standard. The previous order of the respondent-board holding the petitioners to be guilty of the alleged misconduct was based on the said admission and this Court while allowing previous Special Civil Applications had held that the so called admission was not required to be acted upon in view of the circumstances in which the admission was given. On the same set of material, it was not open to the respondent-board to arrive at the same decision which was held to be illegal by the learned single judge in the previous two petitions.

5.2 The respondent-board has alleged that answers written in some of the pages of the answer books were copied from the booklet in question. A bare comparison of the answers in the answer book with the booklet in question would go to show that there was no copying and that there was considerable variance in the answers in the answer books and answers in the booklet.

5.3 The examination committee of the respondent-board had ignored the statement of supervisor and the statement given by the class supervisor before the examination committee which completely exonerates the petitioners. In view of this material also, no reasonable person could have found the petitioners guilty of charge of copying.

5.4 The petitioners had fared well at the examinations in all other question papers. Music was the 7th subject - an optional subject, the marks for which are not taken into account for calculating the percentage or for securing the admission to XI standard. The petitioners had therefore no motive to resort to any copying. The petitioners' practical examination in music was already held prior to commencement of the examination in the 7 theory papers.

5.5 The report of the Examination Committee does not disclose any material on the basis of which it can be said that any reasonable person would hold the petitioners to be guilty of the charges levelled against the petitioners. As far as answers to objective type questions are concerned, there is bound to be similarity in the answers given in the text-books and in the answers to be written by the students in the answer book. Merely on the said basis, no adverse inference can be drawn against the petitioners. Various other detailed factual submissions are made on behalf of the petitioners in support of their contention that the present two matters would squarely fall under the no evidence rule and, therefore, impugned orders are required to be set aside.

6. On the other hand, Mr A.D.Oza, learned counsel for the respondent-board submitted as under:-

6.1 The members of the examination squad had caught the petitioners redhanded with the answer book at the examination hall itself and that the petitioners were found copying from the said book. The petitioners had in their own handwriting mentioned their respective seat numbers and names in the respective books which were recovered from them. The officers recovered the booklets when the petitioners were writing from the respective

booklets and the principal of the Government School who was the Controller of the Examination Centre had registered cases against the petitioners and the Supervisory also signed the said form for registering the cases against the petitioners.

6.2 If the confession given by the petitioners on 27.3.1999 was not voluntary, the petitioners would have complained before the appropriate authorities about any duress or coercion but till the filing of the first petition i.e. till 10.6.1999 the petitioners had never complained about any duress or pressure. On the contrary, in the joint representation made by the petitioners and others to the Chairman of the respondent-board, the petitioners admitted that they had committed a mistake which may not be considered as a serious one in a subject like maths and science and they had prayed for pardon.

6.3 The Examination Committee also found that the answers written in the answer book of the petitioners at some of the relevant pages were comparable with the contents of the book at the relevant pages. It is submitted that in view of the following decisions, this Court would not sit in appeal over the decision of the disciplinary authority:-

- (1) 1994 (1) GLH 71
- (2) 1997 (1) GLR 317
- (3) (1998) 9 SCC 236
- (4) (1998) 5 SCC 377

6.4 No allegations of mala fide are made against the Supervisor. The Board has imposed the minimum penalty and a lenient view is taken allowing the petitioners to appear at the 2000 examination and hence no interference of this Court is warranted in these petitions under Article 226 of the Constitution.

7. The petition primarily raises two questions. The first question is whether the finding given by the Examination Committee that the petitioners were carrying the booklets with them in the examination hall for the purpose of copying during the theory examination in music was based on some evidence or it was based on no evidence.

Now there is no dispute about the fact that the booklets in question came to be seized by the squad members from near the petitioners' bench. The explanation offered by the petitioners is that when the Supervisor announced that the Vigilance Squad had arrived

and the students can be checked for any material from which they can copy, and in the resultant chaos, several students tried to dispose of the books in their possession and such books which were attempted to be thrown out of the window landed near the petitioners. The Examination Committee has relied on the fact that the booklets in question bore the petitioners' names and seat numbers. The explanation for the same is also given that their names and seat numbers were written after the booklets were collected from the petitioners. It is not the case of the respondents that the supervisor had seen the petitioners with these booklets. In this set of circumstances, the petitioners are justified in contending that there was no evidence to substantiate the charge that the petitioners had carried the booklets in the examination halls. The confession or the admission which is made the sole basis for holding the petitioners to be guilty cannot be of any value especially in view of the explanation of the petitioners that they were not permitted to write the answer books without first giving such admission. Moreover, even applying the standard of preponderance of probabilities it appears that if the petitioners were really having such booklets with them, upon the announcement being made about the arrival of the checking squad the petitioners would also have in all probability thrown away the material with them rather than keep the material with them. The finding given by the examination committee that the petitioners had carried the booklets with them must therefore held to be based on no evidence.

8 The second question which arises for the consideration is whether the finding given by the Examination Committee that the petitioner had copied the answers from the booklets in question was also based on some evidence or it was based on no evidence.

As regards the finding that some of the answers tallied with the answers given in the booklet, there is no dispute about the fact that some of the questions were objective and the others were descriptive. Now the answers to the objective questions would be the same whether the student has crammed up the answers or whether the student had copied from the booklet. As far as descriptive questions are concerned, having gone through the booklets and answer books, it cannot be said that the answers written by the petitioners are verbatim copies. There are some variations. Assuming that a few similarities create suspicion, one cannot overlook the settled principle, as enunciated by a Division Bench of this Court in SIDDHARTH MOHANLAL SHARMA V. SOUTH GUJARAT

" ... Mere suspicion, even if honestly and bona fide entertained on the basis of apparently cogent circumstances, was held to be out of bounds even in domestic inquiries, where the principle that in punishing the guilty scrupulous care must be taken to see that the innocents are not punished, was found to apply as much as it applies to regular criminal trials. In the ultimate analysis, the test which appears to have been applied is whether there was some material capable of having any evidential value."

From the perusal of the material on the record of these petitions, this Court is not in a position to hold that a reasonable person going through the material on record would come to a definite conclusion that the petitioners were guilty of the charge of copying from the booklet in question.

It appears that the material on record raised suspicion of the Examination Committee and the Examination Committee went on to hold that the charge against the petitioners was proved.

9. Having heard the learned counsel for the parties, this Court is of the view that in view of the settled principle that even in departmental enquiries or in inquiries conducted by domestic tribunals suspicion cannot take the place of proof and that the Disciplinary body levying a serious charge of misconduct against a student has to prove it at least on the touchstone of preponderance of probabilities, this Court is constrained to interfere with the impugned decision of the respondent-board holding the petitioners to be guilty of the serious misconduct of carrying the book in the examination hall and copying from the book found in the classroom. This Court is conscious of the fact that the Court does not sit in appeal over the decision of the domestic Tribunal conducting such inquiries into misconduct at an academic examination and the Court is also conscious of the principle that in such enquiries guilt is not required to be proved beyond reasonable doubt. Nevertheless, a perusal of the record shows that the examination committee considered the material including the answer books of the two petitioners herein and compared them with the material in the text book and held the petitioners to be guilty of the serious misconduct without applying the correct test of proving charge by the yardstick of preponderance of

probabilities.

10. In view of the above discussion, the petitions are allowed. The decision of the respondent-authority as contained in the order dated 6.9.1999 at Annexure-D in Special Civil Application No.7366 of 1999 and the order dated 6.9.1999 at Annexure-L in Special Civil Application No.7129 of 1999 are hereby quashed and set aside in so far as the petitioners are concerned, and the respondents are directed to declare the petitioners' result at the SSC Examination conducted by the respondent-Board in March/April 1999 within two weeks from today.

(M.S. Shah, J.)

At this stage, the learned counsel respondent-board prays for stay of operation of this judgment in order to have further recourse in accordance with law.

The learned counsel for the petitioners oppose the request on the ground that it will adversely affect their further studies in the 11th standard.

Having regard to the facts and circumstances, the operation of this judgment is not stayed but it is clarified that declaration of the result by the respondent Board pursuant to the directions contained in this judgment shall abide by any orders which may be passed by the Court hearing the Letters Patent Appeal/s.

December 30, 1999 (M.S. Shah, J.)

(mohd)
